IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3310 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL CORPORATIN

Versus

HIMMATLAL MAFATLAL SUTHAR

Appearance:

1. Special Civil Application No. 3310 of 2003

MR MG NAGARKAR for Petitioner No. 1

MR GM JOSHI for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/07/2004

ORAL JUDGEMENT

1.0. The petitioner Ahmedabad Municipal Corporation [hereinafter referred to as "the Corporation] has

preferred this petition against the judgment and award of the Labour Court, Ahmedabad dated 15th June, 2001 in Reference [L.C.A.] No. 1814/94, whereby the Labour Court has substituted the penalty of dismissal into stoppage of two increments with future effect and has also awarded 40% backwages.

2,0. The short facts of the case are that the respondent-workman at the relevant time was working as Suthar in the Engineering Department of the Corporation. He was dismissed from service on 3rd March, 1993, on the ground that the respondent-workman had remained absent from 3rd March, 1993 to 19th October, 1993 without any prior permission and without previous sanction from the competent authority. In view of the aforesaid misconduct, chargesheet dated 19th October, 1993 came to be issued. Departmental inquiry was initiated and the respondent-workman was asked to remain present before the inquiry officer on 2nd November, 1993, but he does not remain present. Again on 2nd December, 1993, he did not remain present. Ultimately the inquiry was conducted ex-parte and report was submitted on 13th December, 1993.

2.1. In view of the inquiry report, on 24th December, 1993, showcause notice was issued to the respondent-workman, as to why he should not be dismissed from the service. The respondent-workman replied to the said showcause notice vide his reply date 29th December, 1993. Since the Corporation did not find the reply satisfactory, order dismissing him w.e.f. 3rd March, 1993 came be passed on 25th March, 1993.

2.2. Being aggrieved by the order of termination, the respondent-workman raised industrial dispute, which was ultimately referred to the Labour Court for adjudication. Before the Labour Court, both the parties adduced evidence. After appreciating the material produced before it, the Labour Court partly allowed the Reference with the aforesaid directions. It is this award, which is now under challenge in this petition.

3.0. I have heard the learned advocates for the respective parties. It is true that the respondent-workman has committed misconduct, but the powers exercised by the Labour Court under Section 11-A substituting the penalty of stoppage of two increments with future effect is just and proper, but awarding 40% backwages is required to quashed and set aside.

4.0. In that view of the matter, the award of the Labour Court dated 15th June, 2001, is modified to the

extent that the respondent-workman will be reinstated with continuity of service and without backwages and with penalty of stoppage of two increments with future effect. Rule is made absolute to the aforesaid extent with no order as to costs.

4.1. It is however made clear that if in future, the respondent-workman is repeating the same misconduct, it will be open for the Corporation to impose the same penalty which was imposed on 25th March, 1994.

[K.S. JHAVERI, J.]

/phalguni/